

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO:
State of California, *ex rel.* Ven-A-Care v.
Abbott Laboratories, *et al.*
CASE #: 1:03-cv-11226-PBS

) MDL No. 1456
) Master File No. 01-12257-PBS
)
) (Original Central District of California
) No. 03-CV-2238)
)
) Judge Patti B. Saris
)
) MOTION FOR LEAVE TO FILE
) "STATE OF CALIFORNIA'S
) ELECTION TO DECLINE AS TO
CERTAIN DEFENDANTS AND
ALLEGATIONS" UNDER SEAL

Pursuant to Local Rule 7.2, Plaintiff State of California (hereinafter "State") respectfully moves this Court for leave to file under seal its "State of California's Election to Decline as to Certain Defendants and Allegations".

Both the California and Federal False Claims Acts require that the Complaint in a *qui tam* action shall be filed in camera and remain under seal for at least sixty days and shall not be served on the defendant until the Complaint is unsealed. Local Rule 7.2 requires that a party seeking to file a document under seal submit a motion to file that document under seal. The State has elected to intervene as to particular defendants and causes of action and filed its First Amended Complaint in Intervention on August 25, 2005. The State did not elect to intervene as to all defendants and causes of action named in the *Qui Tam* Plaintiff's original or First Amended Complaint. Because the names of those defendants and causes of action are still confidential, the State seeks to notify the Court of its election to decline intervention under seal.

Furthermore, with respect to certain defendants identified in the "State of California's

Election to Decline as to Certain Defendants and Allegations”, the State is in the process of finalizing a settlement agreement and requests that the matter remain under seal as to those defendants for an additional ninety days to finalize the agreement.

The “State of California’s Election to Decline as to Certain Defendants and Allegations” is being hand delivered to the Clerk under seal, on or about September 12, 2005, for the Court’s consideration pending the Court’s decision on this motion.

Wherefore, the State respectfully requests that the Court grant leave to file the “State of California’s Election to Decline as to Certain Defendants and Allegations” under seal. A proposed Order is being filed and served herewith.

BILL LOCKYER
Attorney General of the State of California

Dated: September 9, 2005

/s/ Brian V. Frankel
BRIAN V. FRANKEL
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CERTIFICATE OF SERVICE

I, BRIAN V. FRANKEL, hereby certify that on September 9, 2005, I caused a true and correct copy of the foregoing, **MOTION FOR LEAVE TO FILE “STATE OF CALIFORNIA’S ELECTION TO DECLINE AS TO CERTAIN DEFENDANTS AND ALLEGATIONS” UNDER SEAL; AND [PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO FILE “STATE OF CALIFORNIA’S ELECTION TO DECLINE AS TO CERTAIN DEFENDANTS AND ALLEGATIONS” UNDER SEAL**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to Verilaw Technologies for posting and notification to all parties.

Dated: September 9, 2005

/s/ Brian V. Frankel
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